

STATE OF MICHIGAN  
COURT OF APPEALS

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ROGER GRATES and CAROLE M. GRATES,

Plaintiffs-Appellees,

v

RICHARD GARST,

Defendant-Appellant.

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UNPUBLISHED

April 17, 2007

No. 265041

Monroe Circuit Court

LC No. 03-016929-CZ

Before: Markey, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying his motion for relief from judgment brought pursuant to MCR 2.612(C)(1)(f) based on assertions of attorney abandonment. We affirm.

A trial court's decision whether to grant relief from judgment is reviewed for an abuse of discretion. *Jones v Enertel, Inc*, 254 Mich App 432, 434; 656 NW2d 870 (2002). Under MCR 2.612(C)(1)(f), relief from a judgment may be grounded on "[a]ny other reason justifying relief from the operation of the judgment." To obtain relief from a judgment pursuant to MCR 2.612(C)(1)(f), three requirements must be met: (1) the reason for setting aside the judgment may not fall under subsections (a)-(e), absent a showing that injustice would result were the judgment to stand; (2) the substantial rights of the opposing party must not be detrimentally affected; and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. *Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999). "Generally, relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered." *Id.* at 479.

Before this lawsuit, defendant sued plaintiffs, raising several counts in relation to his claim for costs of certain repairs made to the property. Defendant filed a lis pendens along with his complaint, thereby delaying the closing of the sale of plaintiffs' property to another party. This would later serve as the basis for plaintiffs' tortious interference claim brought against defendant. Defendant was involved in his own suit against plaintiffs from October 2001 until March 2004, approximately 2½ years. Although it is unclear when defense counsel began representing defendant in the initial action, it is clear that defendant was very involved in this contentious litigation (obtaining a judgment against plaintiffs in the amount of \$3,799.86) and that defense counsel represented defendant up through at least March 2004, some six months after plaintiffs filed their complaint against defendant.

In this case, defense counsel filed a timely answer to plaintiffs' complaint. However, she failed to answer requests to admit and failed to file a response to a motion for summary disposition based on her failure to answer those requests. Consequently, the requests to admit were deemed admitted and the trial court granted summary disposition in plaintiffs' favor. Thereafter, a trial was held on damages and defense counsel failed to appear at that as well. A judgment in the amount of \$180,000 was entered against defendant. Defense counsel never contacted defendant regarding these developments. Defendant counsel failed to return defendant's numerous telephone calls as well as the calls of plaintiffs' counsel and the trial court itself. After defendant filed a complaint with the Attorney Discipline Board, the Board determined that defense counsel "abandoned the representation of her client, resulting in a \$180,000.00 judgment being entered against him." The Board revoked defense counsel's license to practice law.

Nonetheless, defense counsel's conduct does not warrant the relief from judgment defendant seeks. First, this Court has held that relief is to be granted only where the judgment was obtained by the improper conduct of the party in whose favor it was rendered. *Heugel, supra* at 479. Defendant does not contend nor does the record reflect that plaintiffs engaged in any improper conduct. Second, defendant's remedy is more properly found in a legal malpractice suit. Third, given the extensive litigation preceding this case, defendant has shown that he has greater than average sophistication in legal matters and could have taken measures to mitigate the damage caused by his counsel.

For these reasons, and under the unique circumstances of this case, we conclude that the trial court did not abuse its discretion in denying defendant's motion for relief from judgment.

Affirmed.

/s/ Jane E. Markey  
/s/ William B. Murphy  
/s/ Kirsten Frank Kelly